

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re: Wendt, Todd D.,

Chapter 7  
Bky Case No. 04-33329

Debtor.

**NOTICE OF HEARING AND MOTION**  
**OBJECTING TO EXEMPT PROPERTY**

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TO: UNITED STATES TRUSTEE, THE DEBTOR, HIS ATTORNEY AND OTHER  
PARTIES IN INTEREST:

1. Patti J. Sullivan, Trustee of the bankruptcy estate of the above-named Debtor moves the court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 11:30 a.m. on August 31, 2004 in Courtroom No.228B, at the United States Court House, 316 N Robert St., St. Paul, Minnesota 55101.

3. Any response to this motion must be filed and delivered not later than 11:30 a.m. on August 26, 2004, which is three days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays), or filed and served by mail not later than August 20, 2004, which is seven days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rules 4003, 5005, 9013 and 9014, Local Rules 4003-1(a) and 9013-1 et seq. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on June 4, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. §522 and Bankruptcy Rule 4003 and Local Rule 4003-1(a). This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9001-1 to 9006-1 and 9013-1 to 9013-5. Movant requests relief with respect to Debtor's claim for exemption.

6. Attached hereto, as Exhibit "A" is a true and correct copy of Debtor's Schedule C. Movant objects to the Debtor's exemptions claimed in that schedule as follows, for the following reasons:

<u>ASSET:</u>	403B through employer
<u>EXEMPTION:</u>	11 U.S. C. §522(d)(10)(E) (On schedule C debtor also states "NOT part of the estate for information purposes only")
<u>VALUE CLAIMED AS EXEMPT:</u>	\$19,000.00

**I. The debtor's 403b is property of the estate.**

The Debtor claims that the "403(b) through employer" is not property of the estate, apparently arguing that this asset is excluded from the estate pursuant to 11 U.S.C. §541(c)(2). 11 U.S.C. §541(c)(2) provides the following exclusion from the otherwise broad definition of "property of the estate" contained in 541(a)(1) of the Code, "A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable non-bankruptcy law is enforceable in a case under this title." Patterson v. Shumate 504 U.S. 753 (1992). "...generally under 11 U.S.C. §541 the bankruptcy estate consists of all legal and equitable interest of the debtor at the time of the filing of the bankruptcy petition. In re Swanson 873 F.2d 1121, 1122 (8<sup>th</sup> Cir.1989).

A recent split decision of the Bankruptcy Appellate Panel of the Sixth Circuit, In re Adams 302 B.R. 535 (B.A.P. 6<sup>th</sup> Cir. 2003) dealt with the issue of whether an ERISA qualified plan must be held in an express trust in order to be excluded from the estate under 11 U.S.C. §541(c)(2). Therein the court said "the debtors bear the burden of demonstrating that all the requirements of § 541(c)(2) have been met before the property in question can be effectively excluded from the estate." Adams 302 B.R. at 539 quoting In re Barnes, 264 B.R. 415, 420-21; Pineo v. Fulton, 240 B.R. 854, 861 (Bankr.W.D.Pa.1999).

In the Adams case, the trustee objected to the debtors' claim of exemption in their 403(b)

tax-sheltered annuity pension plans. The Bankruptcy Court ruled that both of the pension plans were excluded from property of the estate. The Bankruptcy Appellate Panel for the Sixth Circuit reversed and remanded the case for further proceedings based on a finding that the pension plans should be included as property of the estate. In that case, the Bankruptcy Appellate Panel found the principal issue to be whether the bankruptcy court erred when it concluded that the Debtors' 403(b) annuity plans constitute trusts within the meaning of 11 U.S.C. §541(c)(2). Adams 302 B.R. at 538. In Adams, the debtors each had an interest in a separate retirement plan, both of which were qualified under 26 U.S.C. 403(b) as tax-sheltered annuity pension plans. Both plans contained anti-alienation clauses that prevented the debtors from reaching the assets of their pension funds until they are 59 ½ years of age, with certain hardship exceptions. The Sixth Circuit Bankruptcy Appellate Panel found that the court mistakenly thought that the only criteria for excluding the assets of the pension plan from the estate under 541(c)(2) was whether the plan in question was ERISA qualified. An inquiry under §541(c)(2) normally has three parts: First, does the debtor have a beneficial interest in a trust? Second, is there a restriction on the transfer of that interest? Third, is the restriction enforceable under non-bankruptcy law? Taunt v. Genr'l Retirement Sys. (In re Wilcox), 233 F.3d 899, 904 (6<sup>th</sup> Cir. 2000); See Adams 302 B.R. at 539.

The Adams majority Bankruptcy Appellate Panel reversed the lower court on grounds, first, that §541(c)(2) requires that the property to be excluded be held in a trust and, second, that the debtors had not met their burden of demonstrating that their annuity plans were trusts. Adams 302 B.R. at 539. The Adams court expressed serious doubt as to whether the husband's employer could be a trustee. Nowhere in the plan or certificate of participation was the employer called a trustee. After the first payment was made on behalf of an employee, equitable issued an annuity, and all further dealings of any substance were between equitable and the employee. In fact, the court said the employer was little more than a conduit. Adams 302 B.R. at 544. Thus the plan could be viewed as operating primarily under principles of agency, rather than those of a trust. The purchase of the annuity ordinarily creates the relationship of debtor/creditor, not trustee/beneficiary. Adams 302 B.R. at 539 citing Hughes v. Sun Life Assur. Co. 159 F.2d 110, 113 (7<sup>th</sup> Cir. 1946). Demonstration of a trust goes beyond its ERISA qualification, just because an annuity is ERISA qualified does not mean that it is a trust. Adams 302 B.R. at 541. The Adams court referred to Section 26 U.S.C. 403(b), which provides in pertinent part as follows:

If an annuity contract is purchased.... then contributions and other additions by such employer for such annuity contract shall be excluded from the gross income of the employee for the taxable year...the amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in

which so distributed), under section 72 (relating to annuities). Adams 302 B.R. at 541.

The court noted that ERISA specifically exempts 403(b) annuity plans from ERISA trust requirements. The court explained that the exception to the trust requirement has to do with the tax statute that allowed employees of certain charitable organizations to defer income under a tax-sheltered Section 403(b), which was added by Congress in 1958 in order to restrict the amount of compensation deferrable under such annuity arrangements. Section 403 (b) continued the deferral but provided a formula for limiting the amount deferred according to the employee's compensation and length of service. No trust was required or employed as part of these tax sheltered annuities. Adams 302 B.R. at 543. The Sixth Circuit Bankruptcy Appellate Panel noted that the main entities which sell the annuity contracts are insurance companies, and since insurance companies are in the business of selling contracts, not acting as trustees, it was necessary for them to obtain an exception from ERISA's general rule that plan assets be held in trusts. Adams 302 B.R. at 543. For these reasons, including no mention of trust or trustee in any of the documentation, and no evidence of any intention to create a trust, the Sixth Circuit held that the debtors have failed to carry their burdens of proof under 11 U.S.C. § 541(c)(2) in that they failed to show they were beneficiaries of trusts. Adams 302 B.R. at 545.

In Adams, the Dissent argued that 541(c) of the Bankruptcy Code and Section 1056(d)(1) of the ERISA (requiring pension plans to contain anti-alienation clauses) are in conflict and that ERISA should prevail. The Sixth Circuit Bankruptcy Appellate Panel disagreed and found that both statutes could be applied without interfering with the other. The Dissent went on to argue that policy reasons and the goals of ERISA require the court to expand the language of 541(c) beyond trusts. The Adams court rejected this suggestion upon the reasoning that if Congress had intended such a result it could easily have expanded the language by adding a few words to 541(c)(2), which was enacted some four years after ERISA became law. The majority opinion concluded that any changes in the law should come in the form of a statutory amendment enacted by Congress, not by an interpretation from the courts. Adams 302 B.R. at 545. Two other courts have issued decisions, which support the holding of the Adams majority, that the asset must be a trust within the meaning of 11 U.S.C. § 541(c)(2), before it can be excluded from the bankruptcy estate pursuant to 541(c)(2). See In re Quinn, 299 B.R. 450 (Bankr.W.D.Mich. 2003) and In re Williams 290 B.R. 83 (Bankr.E.D.Pa. 2003).

In the instant case, the Trustee has not been provided with complete 403B plan documentation, and therefore is unable to determine if it is a trust and if it contains the necessary reference to a trust or trustee as required by the decision set forth in In re Adams. The debtor has

provided the Trustee with a quarterly statement for the time period March 31, 2004 through June 30, 2004, reflecting that the contributions to the 403b were made on May 10<sup>th</sup> 2004. It is not clear if the debtor or the employer made the actual contribution. Attached hereto as Exhibit “B” is a copy of the Quarterly statement for the time period covering March 31, 2004 through June 30, 2004 reflecting a closing balance of \$18,796.37. For the same reasoning as set forth in the Adams decision, the Debtor has failed to meet his burden of proof that the 403b is a “trust”.

## **II. The 403B is Not Exempt under 11 U.S.C. § 522(d)(10)(E).**

Even if the court here were to find that the “annuity” constitutes a trust, within the meaning of 541(c)(2), it still fails, as the 403b is not derived from an employment relationship or a self-employment endeavor; and (2) is not payable on account of illness, disability, death, age, or length of service.<sup>1</sup>

Federal law permits debtors to exempt certain employee benefits. The relevant statute provides that a debtor may exempt:

The debtors right to receive a payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependant of the debtor,

11 U.S. C. § 522 (d)(10)(E). To qualify for the Federal exemption, the annuity must be derived from an employment relationship or a self-employment endeavor. *In re St. John*, 221 B. R. 651 (Bankr. D. Conn. 1998). In addition, the Annuity must be payable on account of illness, disability, death, age, or length of service. *Id.*

In this case, there is no evidence that the 403b is derived from an employment relationship or a self-employment endeavor. Similarly, there is no evidence that the 403B is payable on account of illness, disability, death, age, or length of service. As a result, the 403b

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<sup>1</sup> The Trustee has requested (but has not yet received) documentation to establish that the 403b is derived from an employment relationship or a self-employment endeavor and is payable on account of illness, disability, death, age, or length of service.

does not qualify as exempt under 11U.S.C. § 522(d)(10)(E). In the case of *In re St. John*, the court denied an exemption claimed by a debtor under 11U.S.C. § 522(d)(10)(E) where the debtor purchased the annuity at age 69 with payments to begin immediately, because it was not established “on account of illness, disability, death, age or length of service”. In the instant case, the Trustee has not received sufficient information to determine if the 403b is exempt under the applicable statute.

### **III. 11 U.S.C. § 522 (g) precludes exemption of the 403b.**

It appears that the funds used to purchase the 403b were contributed on May 10, 2004 and that the transfer may be avoidable by the Trustee pursuant to 11 U.S.C. § 548. 11 U.S. C. §522 (g) precludes the debtor from claiming any interest in the money transferred as exempt because the transfer was voluntary. The Trustee does not have sufficient income to determine if the exemption claim of the debtor is appropriate.

WHEREFORE, the Trustee requests that the Court determine the following:

1. The 403b is property of the estate; and
2. Deny the Debtor’s claimed exemption in the 403b arising under 11 U.S. C. §522 (d)(10)(E).

Dated this 4<sup>th</sup> day of August, 2004.

ULVIN AND SULLIVAN ATTORNEYS, P.A.

BY /e/ Patti J. Sullivan  
Patti J. Sullivan  
Attorney at Law  
Attorney ID No. 170124  
P.O. Box 16406  
St. Paul, MN 55116  
(651) 699-4825

VERIFICATION. I, Patti J. Sullivan, Movant, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated this 4<sup>th</sup> day of August, 2004.

/e/ Patti J. Sullivan

Patti J. Sullivan, Trustee

In re Todd D. Wendt

/ Debtor

Case No. \_\_\_\_\_

(if known)

**SCHEDULE C-PROPERTY CLAIMED AS EXEMPT**

Debtor elects the exemptions to which debtor is entitled under:

(Check one box)

☒ 11 U.S.C. § 522(b) (1): Exemptions provided in 11 U.S.C. § 522(d). Note: These exemptions are available only in certain states.☐ 11 U.S.C. § 522(b) (2): Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

Description of Property	Specify Law Providing each Exemption	Value of Claimed Exemption	Current Market Value of Property Without Deducting Exemptions
Checking: TCF, Forest Lake, MN \$10.,	11 USC 522 (d) (5)	\$ 10.00	\$ 10.00
Landlord deposit	11 USC 522 (d) (5)	\$ 250.00	\$ 250.00
Household goods and furnishings	11 USC 522 (d) (3)	\$ 6,000.00	\$ 6,000.00
Wearing apparel	11 USC 522 (d) (3)	\$ 700.00	\$ 700.00
Jewelry	11 USC 522 (d) (4)	\$ 200.00	\$ 200.00
Pistol \$100.,	11 USC 522 (d) (5)	\$ 100.00	\$ 100.00
403B through employer approximately- \$19,000.00 (not part of the estate for information purposes only)	11 USC 522 (d) (10) (E)	\$ 19,000.00	\$ 19,000.00
US Savings Bonds	11 USC 522 (d) (5)	\$ 125.00	\$ 125.00
1998 Chevrolet Lumina	11 USC 522 (d) (2)	\$ 2,500.00	\$ 1,700.00
<div style="text-align: center;">EXHIBIT</div> <div style="text-align: center;">A</div>			



**MUTUAL OF AMERICA**

Quarterly Statement 3/31/2004 - 6/30/2004

Questions? Contact:

Beth Eberbach  
Normandale Lake Office Park  
8300 Norman Center Drive  
Suite 870  
Bloomington, MN 55437  
(952) 820-0089  
-or-  
Customer Service  
(800) 468-3785

Todd D. Wendt  
907 8th St SW Apt 206  
Forest Lake MN 55025-1775

**Balance Summary**

Plan Type	Employer Plan#	Closing Dollar Balance
401(a) Thrift	012624-J-1A	733.81
403(b) Thrift	012624-J-3B	18,796.37
<b>Total</b>		<b>\$19,530.18</b>

**401(a) Thrift**

Employer Number: 012624-J-1A  
Employer: Board of Social Ministry

**Plan Summary**

Description	Dollar Balance
Opening Balance	413.22
Employer Matching Contributions	319.95
Investment Earnings	.64

**Allocation of Future Contributions**

Description	Allocation%
Interest Accumulation Account	20%
Mid-Term Bond Fund	20%
Mid-Cap Equity Index Fund	15%
Equity Index Fund	30%
Aggressive Equity Fund	15%

Closing Balance **\$733.81**

**Interest Accumulation Account Activity**

Date	Description	Dollar Amount
03/31/04	Opening Balance - Employer	82.23
04/08/04	Matching Contribution 03/25/04	9.03
04/13/04	Matching Contribution 04/08/04	8.62

EXHIBIT

B

# MUTUAL OF AMERICA

## Quarterly Statement

3/31/2004 - 6/30/2004

Date	Description		Dollar Amount
04/23/04	Matching Contribution	04/22/04	11.10
05/07/04	Matching Contribution	05/06/04	8.80
05/21/04	Matching Contribution	05/20/04	8.91
06/10/04	Matching Contribution	06/03/04	8.57
06/21/04	Matching Contribution	06/17/04	8.93
06/30/04	Investment Earnings		1.04
06/30/04	Closing Balance - Employer		147.23
Closing Balance			\$147.23

The effective annual yield on amounts allocated to the Interest Accumulation Account under this plan is currently 3.25%. Interest is compounded daily to produce the stated effective annual yield.

### Mid-Term Bond Fund Activity

Date	Description	Units	Unit Value	Dollar Amount
03/31/04	Opening Balance - Employer	48.72	1.703397	82.99
04/08/04	Matching Contribution	03/25/04	5.37	1.681427
04/13/04	Matching Contribution	04/08/04	5.15	1.673195
04/23/04	Matching Contribution	04/22/04	6.68	1.661993
05/07/04	Matching Contribution	05/06/04	5.38	1.635948
05/21/04	Matching Contribution	05/20/04	5.43	1.640197
06/10/04	Matching Contribution	06/03/04	5.23	1.639571
06/21/04	Matching Contribution	06/17/04	5.43	1.645285
06/30/04	Investment Earnings			2.68
06/30/04	Closing Balance - Employer	87.39	1.650846	144.27
Closing Balance			87.39	1.650846
				\$144.27

### Mid-Cap Equity Index Fund Activity

Date	Description	Units	Unit Value	Dollar Amount
03/31/04	Opening Balance - Employer	42.74	1.480220	63.26
04/08/04	Matching Contribution	03/25/04	4.54	1.497243
04/13/04	Matching Contribution	04/08/04	4.40	1.474241
04/23/04	Matching Contribution	04/22/04	5.60	1.490364
05/07/04	Matching Contribution	05/06/04	4.72	1.406129
05/21/04	Matching Contribution	05/20/04	4.81	1.394035
06/10/04	Matching Contribution	06/03/04	4.41	1.460994
06/21/04	Matching Contribution	06/17/04	4.61	1.455827
06/30/04	Investment Earnings			1.72
06/30/04	Closing Balance - Employer	75.83	1.491201	113.08
Closing Balance			75.83	1.491201
				\$113.08

EXHIBIT

B

# MUTUAL OF AMERICA

Quarterly Statement 3/31/2004 - 6/30/2004

## Equity Index Fund Activity

Date	Description	Units	Unit Value	Dollar Amount
03/31/04	Opening Balance - Employer	46.62	2.660873	124.05
04/08/04	Matching Contribution 03/25/04	5.03	2.692670	13.55
04/13/04	Matching Contribution 04/08/04	4.84	2.669105	12.93
04/23/04	Matching Contribution 04/22/04	6.18	2.695260	16.65
05/07/04	Matching Contribution 05/06/04	5.09	2.596720	13.21
05/21/04	Matching Contribution 05/20/04	5.17	2.586716	13.37
06/10/04	Matching Contribution 06/03/04	4.78	2.688816	12.86
06/21/04	Matching Contribution 06/17/04	5.01	2.674302	13.40
06/30/04	Investment Earnings			3.33
06/30/04	Closing Balance - Employer	82.72	2.700087	223.35
Closing Balance		82.72	2.700087	\$223.35

## Aggressive Equity Fund Activity

Date	Description	Units	Unit Value	Dollar Amount
03/31/04	Opening Balance - Employer	22.66	2.678249	60.69
04/08/04	Matching Contribution 03/25/04	2.50	2.712851	6.77
04/13/04	Matching Contribution 04/08/04	2.43	2.657262	6.46
04/23/04	Matching Contribution 04/22/04	3.14	2.647871	8.32
05/07/04	Matching Contribution 05/06/04	2.73	2.419057	6.60
05/21/04	Matching Contribution 05/20/04	2.81	2.376194	6.68
06/10/04	Matching Contribution 06/03/04	2.61	2.466119	6.43
06/21/04	Matching Contribution 06/17/04	2.71	2.469140	6.70
06/30/04	Investment Earnings			2.77
06/30/04	Closing Balance - Employer	41.59	2.545805	105.88
Closing Balance		41.59	2.545805	\$105.88

According to our records you are 20% vested in the amount in your employer fund.

Please refer to Separate Account No. 2 Performance Data Insert.

## 403(b) Thrift

Employer Number: 012624-J-3B  
Employer: Board of Social Ministry

## Plan Summary

Description	Dollar Balance
Opening Balance	137.79
Employee Matched Contributions	106.65

## Allocation of Future Contributions

Description	Allocation%
Interest Accumulation Account	20%
Mid-Term Bond Fund	20%

EXHIBIT

B

# MUTUAL OF AMERICA

Quarterly Statement 3/31/2004 - 6/30/2004

Description	Dollar Balance	Description	Allocation%
Rollover Contributions	17,820.49	Mid-Cap Equity Index Fund	15%
Investment Earnings	731.44	Equity Index Fund	30%
Closing Balance	\$18,796.37	Aggressive Equity Fund	15%

## Interest Accumulation Account Activity

Date	Description	Dollar Amount
03/31/04	Opening Balance - Employee	
04/08/04	Matched Contribution	27.43
04/13/04	Matched Contribution	3.01
04/23/04	Matched Contribution	2.87
05/07/04	Matched Contribution	3.70
05/21/04	Matched Contribution	2.93
06/10/04	Matched Contribution	2.97
06/21/04	Matched Contribution	2.85
06/30/04	Investment Earnings	2.97
06/30/04	Closing Balance - Employee	.30
		49.03
03/31/04	Opening Balance - Rollover	
05/10/04	Contribution	.00
06/30/04	Investment Earnings	3,564.09
06/30/04	Closing Balance - Rollover	16.24
		3,580.33
Closing Balance		\$3,629.36

The effective annual yield on amounts allocated to the Interest Accumulation Account under this plan is currently 3.25%. Interest is compounded daily to produce the stated effective annual yield.

## Mid-Term Bond Fund Activity

Date	Description	Units	Unit Value	Dollar Amount
03/31/04	Opening Balance - Employee			
04/08/04	Matched Contribution	16.23	1.703397	27.65
04/13/04	Matched Contribution	1.79	1.681427	3.01
04/23/04	Matched Contribution	1.72	1.673195	2.87
05/07/04	Matched Contribution	2.23	1.661993	3.70
05/21/04	Matched Contribution	1.79	1.635948	2.93
06/10/04	Matched Contribution	1.81	1.640197	2.97
06/21/04	Matched Contribution	1.74	1.639571	2.85
06/30/04	Investment Earnings	1.81	1.645285	2.97
06/30/04	Closing Balance - Employee			.88
		29.12	1.650846	48.07
03/31/04	Opening Balance - Rollover		1.703397	.00

EXHIBIT

B

# MUTUAL OF AMERICA

Quarterly Statement 3/31/2004 - 6/30/2004

Date	Description	Units	Unit Value	Dollar Amount
05/10/04	Contribution	2,177.63	1.636683	3,564.09
06/30/04	Investment Earnings			30.84
06/30/04	Closing Balance - Rollover	2,177.63	1.650846	3,594.93
Closing Balance		2,206.75	1.650846	\$3,643.80

## Mid-Cap Equity Index Fund Activity

Date	Description	Units	Unit Value	Dollar Amount
03/31/04	Opening Balance - Employee	14.32	1.480220	21.20
04/08/04	Matched Contribution 03/25/04	1.52	1.497243	2.28
04/13/04	Matched Contribution 04/08/04	1.47	1.474241	2.17
04/23/04	Matched Contribution 04/22/04	1.87	1.490364	2.78
05/07/04	Matched Contribution 05/06/04	1.58	1.406129	2.22
05/21/04	Matched Contribution 05/20/04	1.61	1.394035	2.25
06/10/04	Matched Contribution 06/03/04	1.49	1.460994	2.17
06/21/04	Matched Contribution 06/17/04	1.55	1.455827	2.26
06/30/04	Investment Earnings			.56
06/30/04	Closing Balance - Employee	25.41	1.491201	37.89
03/31/04	Opening Balance - Rollover		1.480220	.00
05/10/04	Contribution	1,934.00	1.382171	2,673.11
06/30/04	Investment Earnings			210.87
06/30/04	Closing Balance - Rollover	1,934.00	1.491201	2,883.98
Closing Balance		1,959.41	1.491201	\$2,921.87

## Equity Index Fund Activity

Date	Description	Units	Unit Value	Dollar Amount
03/31/04	Opening Balance - Employee	15.53	2.660873	41.32
04/08/04	Matched Contribution 03/25/04	1.67	2.692670	4.51
04/13/04	Matched Contribution 04/08/04	1.61	2.669105	4.31
04/23/04	Matched Contribution 04/22/04	2.06	2.695260	5.55
05/07/04	Matched Contribution 05/06/04	1.69	2.596720	4.40
05/21/04	Matched Contribution 05/20/04	1.72	2.586716	4.45
06/10/04	Matched Contribution 06/03/04	1.59	2.688816	4.28
06/21/04	Matched Contribution 06/17/04	1.67	2.674302	4.46
06/30/04	Investment Earnings			1.08
06/30/04	Closing Balance - Employee	27.54	2.700087	74.36
03/31/04	Opening Balance - Rollover		2.660873	.00
05/10/04	Contribution	2,080.75	2.569332	5,346.14
06/30/04	Investment Earnings			272.07

EXHIBIT

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# MUTUAL OF AMERICA

Quarterly Statement 3/31/2004 - 6/30/2004

Date	Description	Units	Unit Value	Dollar Amount
06/30/04	Closing Balance - Rollover	2,080.75	2.700087	5,618.21
	Closing Balance	2,108.29	2.700087	5,692.57

## Aggressive Equity Fund Activity

Date	Description	Units	Unit Value	Dollar Amount
03/31/04	Opening Balance - Employee	7.54	2.678249	20.19
04/08/04	Matched Contribution 03/25/04	.83	2.712851	2.25
04/13/04	Matched Contribution 04/08/04	.81	2.657262	2.15
04/23/04	Matched Contribution 04/22/04	1.05	2.647871	2.77
05/07/04	Matched Contribution 05/06/04	.91	2.419057	2.20
05/21/04	Matched Contribution 05/20/04	.93	2.376194	2.22
06/10/04	Matched Contribution 06/03/04	.87	2.466119	2.14
06/21/04	Matched Contribution 06/17/04	.90	2.469140	2.23
06/30/04	Investment Earnings			.92
06/30/04	Closing Balance - Employee	13.84	2.545805	35.23
03/31/04	Opening Balance - Rollover		2.678249	.00
05/10/04	Contribution	1,129.05	2.367538	2,673.06
06/30/04	Investment Earnings			201.28
06/30/04	Closing Balance - Rollover	1,129.05	2.545805	2,874.34
	Closing Balance	1,142.89	2.545805	52,989.57

Please refer to Separate Account No. 2 Performance Data Insert.

Mutual of America Life Insurance Company is exempt from requirements to be a member of the Securities Investor Protection Corporation.

Thank you for using Mutual of America's services.  
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EXHIBIT

B



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In the Matter of:

Wendt, Todd D.,

Bky No. 04-33329

Debtor.

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**UNSWORN CERTIFICATE OF SERVICE**

I, Joeline Kissinger, declare under penalty of perjury that on the 4<sup>th</sup> day of August, 2004,  
I mailed a copy of the attached **Notice of Hearing and Motion Objecting to Exempt Property  
Property and Proposed Order** by first class mail postage prepaid to each entity named below  
or on the statement attached at the address stated below or in said attachment for each entity:

Robert J. Everhart  
P.O. Box 120534  
New Brighton, MN 55112

United States Trustee  
1015 United States Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Wendt, Todd D.  
907 8th St Sw Apt 206  
Forest Lake, MN 55025-1775

Executed on this 4<sup>th</sup> day of August, 2004.

  
Joeline Kissinger

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re: Wendt, Todd D.,

Chapter 7  
Bky Case No. 04-33329

Debtor.

**ORDER**

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At St. Paul, Minnesota, \_\_\_\_\_, 2004.

The above matter came before the Court on the objection of the Chapter 7 Trustee to exemptions. Appearances were as noted upon the record. Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED:

1. The 403b is property of the estate.
2. That the Trustee's objection is sustained and The Debtor's claimed exemption in the 403B through employer is hereby denied.

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Gregory F. Kishel  
Chief United States Bankruptcy Judge